

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

v.

MDL No: 1:13-md-2419-FDS

This Document Relates to:

Montee v. BKC Pain Specialists LLC, et al.,
No: 1:13-cv-12657-FDS

Cooper v. BKC Pain Specialists, LLC, et al.
No: 1:13-cv-12658-FDS

Cooper v. BKC Pain Specialists, LLC, et al.
No: 1:13-cv-12659-FDS

**DEFENDANTS, BKC PAIN SPECIALISTS,
ADIL KATABAY, M.D. AND NIKESH BATRA, M.D.’S
CONSOLIDATED MOTION TO DISMISS**

NOW COMES Defendants Nikesh Batra, M.D., Adil Katabay, M.D. and BKC Pain Specialists, LLC and, pursuant to Fed.R.Civ.P. 12(b)(6) and Local Rule 7.1, hereby move to dismiss the plaintiffs’ claims in Montee v. BKC Pain Specialists LLC. et al No: 1:13-cv-12657-FDS; Cooper v. BKC Pain Specialists, LLC et al No: 1:13-cv-12658-FDS; and Cooper v. BKC Pain Specialist LLC et al No. 1:13-cv-12659-FDS., respectively. As more fully set forth in the accompanying consolidated Memorandum of Law, plaintiffs have failed to state a claim upon which relief can be granted.

The defendant health clinic (BKC Pain Specialists, Inc.) and the two healthcare providers (Dr. Batra and Dr. Katabay) bear no legal responsibility for any harm allegedly suffered from the administration of preservative free methylprednisolone acetate (“MPA”) manufactured and sold by New England Compounding Pharmacy, Inc. (“NECC”). The defendants had no role or

responsibility in NECC's manufacturing and sterility practices or processes or for any deficiencies in its "clean room" which are alleged to have resulted in the fungal contamination of certain lots or vials of MPA. Indeed, the efforts of plaintiffs to impose liability under negligence, agency, product liability and Ohio consumer protection law is without factual and legal support.

WHEREFORE, defendants, Nikesh Batra, M.D., Adil Katabay, M.D. and BKC Pain Specialists, LLC respectfully request that their Consolidated Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and Local Rule 7 be **ALLOWED**.

Respectfully Submitted
The Defendants
BKC PAIN SPECIALISTS, ADIL KATABAY,
M.D. and NIKESH BATRA, M.D.,
By their attorney,

/s/ Tory A. Weigand

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on **February 7, 2014**

/s/ Tory A. Weigand

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LOCAL RULE 7.1 CERTIFICATION

The undersigned counsel for the defendant hereby certifies that he has conferred with counsel in this matter, in a good faith attempt to resolve or narrow the issues of dispute raised in the accompanying motion, in accordance with Local Rule 7.1.

/s/ Tory A. Weigand